

**Effective 5/10/2016**

**31A-23a-410 Insurer's liability if insured pays premium to a licensee or group policyholder.**

- (1) Subject to Subsections (2) and (5), as between the insurer and the insured, the insurer is considered to have received the premium and is liable to the insured for losses covered by the insurance and for any unearned premiums upon cancellation of the insurance if an insurer, including a surplus lines insurer:
  - (a) assumes a risk; and
  - (b) the premium for that insurance is received by:
    - (i) a licensee who placed the insurance;
    - (ii) a group policyholder;
    - (iii) an employer who deducts part or all of the premium from an employee's wages or salary; or
    - (iv) an employer who pays all or part of the premium for an employee.
- (2) Subsection (1) does not apply if:
  - (a) the insured pays a licensee, knowing the licensee does not intend to submit the premium to the insurer; or
  - (b) the insured has premium withheld from the insured's wages or salary knowing the employer does not intend to submit it to the insurer.
- (3)
  - (a) In the case of a group policyholder who has received the premium, the insurer may terminate its liability by giving notice of coverage termination to:
    - (i) the certificate holders;
    - (ii) the policyholder; and
    - (iii) the producer, if any, for the policy.
  - (b) The insurer may not send the notice required by Subsection (3)(a) to a certificate holder before 20 days after the day on which premium is due and unpaid.
  - (c) The liability of the insurer for the losses covered by the insurance terminates at the later of:
    - (i) the last day of the coverage period for which premium has been received by the group policyholder;
    - (ii) 10 days after the date the insurer mails notice to the certificate holder that coverage has terminated; or
    - (iii) if the insurer fails to provide notice as required by this Subsection (3), 45 days from the last date for which premium is received.
- (4) Despite a group policyholder's collection of premium under Subsection (1), the responsibility of an insurer to continue to cover the losses covered by the insurance to group policy certificate holders terminates upon the effective date of notice from the policyholder that:
  - (a) coverage of a similar kind and quality has been obtained from another insurer; or
  - (b) the policyholder is electing to voluntarily terminate the certificate holder's coverage and has given the certificate holder's notice of the termination.
- (5) If the insurer is obligated to pay a claim pursuant to this section, the licensee or group policyholder who received the premium and failed to forward it is obligated to the insurer for the entire unpaid premium due under the policy together with reasonable expenses of suit and reasonable attorney fees.
- (6) If, under an employee health insurance plan, an employee builds up credit for future coverage because the employee has not used the policy protection, or in some other way, the insurer is obligated to the employee for that future coverage earned while the policy was in full effect.
- (7)
  - (a) Notwithstanding that an insurer is liable for losses as provided in this section, this section applies only to apportion the liability for the losses described in this section.

(b) This section does not:

- (i) extend a policy or coverage beyond its date of termination; or
- (ii) alter or amend a provision of a policy.

Amended by Chapter 138, 2016 General Session